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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE
UNITED STATES
NO. 78-5693

DANIEL ROSS,
Petitioner

Vs.

KAYE BYRD, et al.,
Respondents

Petition Reply Brief

AFFIDAVIT

I, Daniel Ross, first being sworn, deposes and says:

That I am an incarcerated citizen of the North Carolina Department of Correction, and housed at the Franklin County Subsidiary located in Bunn, North Carolina.

I began serving a life sentence on March 19, 1969, and not on March 26, 1969 as alleged by respondent and having been convicted of murder in the first degree in the Superior Court of Wake County. Under the Statutes in effect at the time of my conviction, N.C.G.S. 148-58, a person serving a life sentence became eligible for parole after serving a life sentence upon completion of 10 years of the sentence. This Statute has been applied to me to determine my parole eligibility date.

It should be noted that I am North Carolina most indefatible jailhouse lawyer and labeled as such, I am classified as two characters. One being a Special Offender while the other being is that I am impulsive and unpredictable individual and also is under privileged.

With regard and/or responding to respondent's unsubstantiated fabricated accusation to wit escape. I specifically testifies and testifies with truth, that at no time have I been indicted, tried, convicted or given a sentence for escape in the North Carolina courts or courts of the United States, or in any other court of competent jurisdiction whereof I shall have been duly convicted shall exist in the country.

Since February 1, 1978, I have filed sixteen litigations in the United States District Court for the Eastern District of North Carolina. All except one were filed against the North Carolina Prison Administration. See Roster Nos. 1346; 1376; 1392; 1390; 1396; 1460; 1466; 1474; 1476; 1480; 1492; 1500; 1570; 1576; 1582. My most recent litigations entitled Daniel Ross, et al. vs. James C. Woodard, et al., No. 78-0535-CRT (E.D.N.C.) and Daniel Ross, et al., vs. James B. Hunt, Jr., et al., No. 78-56-CRT (E.D.N.C.) (pending). One involves overcrowding, the other involves racial discrimination in which the United States Department of Justice is contemplating on intervening. I am also a witness against the North Carolina high ranking prison officials George D. Boone, Assistant Superintendent and Fredrick Rehnor, Captain, who were indicted for murder of Inmate Glenn Earl Pitt, and presently pending trial in the Superior Court Halifax, North Carolina. I am also responsible for the presentation of the cases entitled Everrett v. Stephenson, C-75-509-G-HC (M.D.N.C. 1977) (appeal pending) No. 78-6059 and Cole v. Stephenson,__F__Supp. No. 77-0351 (E.D. N.C. 1978) (appeal pending) in the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. These two cases could effect some of the approximately 1, 400 prisoners convicted of murder prior to 1975. On my own without the assistance of an attorney I won my case in the United States Court of Appeals in a landmark decision by the late Judge Sobeloff who held that inmates who did not eat pork for religious reasons were entitled to meals providing basis nutrition without pork. See Ross v. Blackledge, 477 F.2d 616 (4th Cir. 1973).

As a result of my long advocacy in prison reform and as a jailhouse lawyer and prison civil rights activist, it is apparent that I am being charged with escape which is a violation of N.C.G.S. 148-45, and is given an extended and/or a new prison sentence without a trial by a jury and a judge of a criminal court of competent jurisdiction.

The North Carolina Parole Commission uses sixteen criteria in evaluating inmates for parole. These criteria according to respondent's paperwriting have been submitted to this Honorable Court for its review and consideration.

According to the Central Head Quarters Records, my parole eligibility date was November 30, 1978, and by respondent's own admission Ross' contention that his case has not been investigated for parole is true.

Yes, I have not been given a formal parole review within 90 days on the same basis as other inmates as guaranteed by N. C. G.S. 148-58 mandating this consideration. The fact that the respondent admits that the Parole Commission in exercising its discretion decided to not answered the question of whether or not the time served has represented sufficient punishment for my crime though specifically an authorized action, should be as is - was an arbitrary or capricious exercise of judgment by respondent.

Until respondent submitted its brief into this Honorable Court and dated January 11, 1979, I was not informed that the mistake or erroneous (escape) information was what delayed my eligibility for parole until February, 1981, and that my letters regarding my eligibility status and those are offered in support of my testimony informed my eligibility to be November 30,1978.

Throughout my approximately eleven years of confinement as North Carolina number one jailhouse lawyer I have not ever recalled the first instance whereas the interpretation of N.C.G.S. 148-58, which relates to parole- was used in a jailhouse lawyer, a prison civil rights activist, a lifer or other prisoner in general.

It therefore is my belief that since North Carolina Prison has the highest rate of prison commitment than any other State in the Union that she will go to ultra extreme to attemp dishonor to hoodwink, deceive and persuade this Honorable Court in not deciding my case.

I believe that if I had been allowed access to information in my parole file prior to submission of my progress report to the Parole Commission that I could possibly called the escape mistake or erroneous information to have been corrected.

Infact, in March, 1978, the North Carolina Parole Commission's Chairman who is the same Affiant in this case in the case entitled Daniel Ross, et al. vs. James B. Hunt, Jr., et al., No. 78-56-CRT (E.D.NC.) in his Affidavit testified that Ross was scheduled to be reviewed for parole on August 31, 1978; that was 90 days prior to my parole eligibility date which was November 30,1978. See Ross, et al. vs. Hunt, et al., No. 78-56-CRT (E.D.N.C.) pending.

Its strange and questionable since the subject matter has reached this Honorable Court that the question of eligibility passed both the United States District Court for the Eastern District of North Carolina and the United States Court of Appeals without having been raised and passed upon and for the first time, respondent is attempting to raise in this Honorable Court.

I specifically tesfies that my parole eligibility date was November 30, 1978. (See Exhibits A, B, C, D, E, and F attached).

This the 12th day of January, 1979.

Affiant

Subscribed and Sworn to before me on 12th day of January, 1979

Notary Public

My Commission Expires